IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5103 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH LAXMANRAV MARATHA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5103 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/12/2001

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 28/52001 passed by the Commissioner of Police, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered against the detenu before Naranpura Police Station vide CR No.5157 of 2001 for the offence punishable under Sections 66(B), 65(E), 81, 98 and 99 of Bombay Prohibition Act. The said offence was registered on 22/5/2001 and the detaining authority, relying upon the said offence, has passed the detention order on 28/5/2001. The learned counsel for the petitioner has submitted that the petitioner made a representation to the concerned authority and thereby the petitioner demanded statements of ASI Bharthaji Hetuji, Police Constables, Vinodkumar Mafabhai, Police Constable Rajendra Javansinh, Udesinh Atabhai, Police Constable, etc. which has been received by the concerned authority on 29/6/2001, but the authority has not supplied the said documents and replied to the petitioner vide letter dtd.17/7/2001 informing him that the said documents will be supplied as and when available. Copy of the reply of the detaining authority dtd.17/7/2001 is ordered to be taken on record. Thus, the detaining authority has not supplied the vital documents though the authority has relied upon the said documents while passing the detention order, and thereby the detaining authority has prevented the petitioner to make an representative representation, which is illegal and hence the impugned detention order is required to be quashed and set aside.

The advocate counsel for the petitioner has further submitted that the neither the detaining authority nor the State has filed affidavit justifying the action of the detaining authority in not supplying the vital documents though demanded by the petitioner. He has relied upon a judgment delivered by this Court reported in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since the detaining authority has not supplied the vital documents - statement of the witnesses, the petitioner has been prevented from making an effective representation, not only that but the neither the detaining authority not the State has filed affidavit, which is illegal and hence the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 28/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Suresh Lakshmanrav Maratha is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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